**Keyway, a Division of Phase Inc.** *and* **Terry L. McGuire.** Case 33-CA-4753

September 17, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On December 12, 1980, Administrative Law Judge Joel A. Harmatz issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order for the reasons set forth below.

The circumstances surrounding the employees' 3-hour walkout on February 27, 1980,[1] are in substantial part undisputed. Respondent is a publicly funded nonprofit organization engaged in providing services in connection with the prevention and treatment of alcoholism, drug abuse, and domestic violence. Respondent's Keyway program is limited to the areas of drug abuse and alcoholism. Since Respondent is primarily dependent upon public grants, which to some extent are contingent upon accreditation of Respondent as a qualified health care institution, it embarked in mid-1979 upon a program designed to prepare the Keyway program for accreditation by the Joint Commission on the Accreditation of Hospitals (JCAH), an independent organization engaged in reviewing and certifying various health care institutions.[2] Since Respondent's administrators felt that the then current Keyway project director, Dennis Willis, did not have sufficient expertise to make the changes required to meet accreditation standards, Respondent engaged Mark Fisch as its "Clinical Director" to assist Willis in developing clinical practices which would meet those standards.[3]

Although the record does not fully reveal the particulars of subsequent events, it is nevertheless clear that the Keyway employees were not happy either with the program to meet accreditation standards or the manner in which it was being effected. Some or all of the employees apparently resisted operational changes directed by Fisch and generally felt that Project Director Willis more closely reflected their views as to the manner in which Keyway's clients should be serviced.

In late January, Respondent terminated Project Director Willis. At a meeting with Respondent's executive director, David Ellis, on January 31, the employees challenged Ellis' justification for terminating Willis and requested a meeting with Respondent's board of directors, a request which was subsequently refused. Thereafter, in a January 31 letter to Ronald Sorrentino, regional coordinator for the Illinois Dangerous Drug Commission (hereinafter DDC)[4] and signed by, *inter alia*, the six alleged discriminatees, Respondent's employees protested the discharge of Willis,[5] criticized new Clinical Director Mark Fisch, and expressed concern about the quality of treatment given to Respondent's clients, "with the entire staff in disarray, and treatment of clients apparently being a low priority item on the agenda" of Respondent's administration. The letter requested an informal hearing with the DDC and a visit by one of its field representatives as soon as possible.

In addition to receiving the letter from the employees, Sorrentino had a number of telephone conversations with employees Terry McGuire and Shirley Rickert. Furthermore, McGuire and employee Chris Box visited Sorrentino in Chicago to discuss "what was going on at the program." Sorrentino testified that the employees' complaints included personality clashes with Clinical Director Fisch and the "pushing" of the program designed to attain accreditation from the JCAH. Sorrentino further testified that, from his discussions with the employees, it appeared that "a lot of the problems that surfaced after [Willis' discharge] were indirectly because of Mr. Willis being released."

On February 27 at approximately 11:30 a.m., Sorrentino and another DDC representative appeared at Respondent's facility to conduct a quarterly onsite visit. Shortly after their arrival, Respondent's staff met and decided to request a meeting with the DDC officials. McGuire spoke with the DDC officials and was informed that they

[1] All dates refer to 1980.

[2] Sometime in 1979, Respondent was informed by the JCAH that, although its alcohol abuse program had previously been accredited, accreditation could no longer be granted on a partial basis and that all of Respondent's programs had to qualify before any form of accreditation would be conferred.

[3] As found by the Administrative Law Judge, both Willis and Fisch are supervisors under Sec. 2(11) of the Act.

[4] The Commission is the state agency charged with licensing, funding, and regulating organizations such as Respondent which are engaged in combating drug abuse.

[5] The letter noted that the employees had considered leaving Respondent in protest at the time of Willis' discharge but had decided against it.

would meet with the employees upon completion of their onsite inspection. McGuire then left and informed the staff of what was said. According to employee Mary Johnson, the employees decided that this was not satisfactory, "because we had been put off by everybody. We felt nobody would listen to us." The employees then decided to leave Respondent's facility and meet to discuss what further action, if any, they should take.

In the meantime, Executive Director Ellis had compiled a list of clients' files to be checked by the DDC officials. He gave the list to McGuire who was preparing to leave, and instructed him to pull the files in his custody and then pass on the list to Maurice Cox so that he might do likewise. Shortly thereafter, Ellis returned to McGuire's office as McGuire was leaving and was informed that the files had not been pulled and the list had been given to Cox. When Ellis went to Cox, Cox informed him that he was "too busy" to pull files and that he, too, was preparing to leave.

Several minutes later, at approximately 11:50 a.m., the six alleged discriminatees gathered in the hallway near the front door and were confronted by Ellis. According to Ellis, he asked the employees what they were doing and they indicated they were leaving. He told them that they could not leave because they had to pull files for the DDC inspection. Ellis testified that one of the employees said something to the effect that "I am leaving now for lunch." Ellis further testified that he asked Shirley Rickert, one of the program nurses, for her keys to the medical records kept by the nurses and she refused, saying she was too busy and was going to lunch. At that point, the employees left the premises, giving no indication as to when they would return. Since Ellis did not have duplicate keys to the nurses' files and was unable to locate a duplicate key to Cox's files, the DDC inspection was severely curtailed.[6]

After the employees left, Ellis found that the clinic doors and safe were locked and that the prepackaged individual doses of methadone for the clients scheduled to arrive beginning at noon for their daily medication had not been prepared before the employees' departure. As a result, Ellis had to call Associate Director Donna Peterson to get keys for the clinic doors and to obtain the combination of the safe in which the drugs were stored. Ellis also had to engage another nurse to come to the premises and prepare the medication for the arriving clients.

The employees, meanwhile, had gone to employee Mary Johnson's home, where, according to Johnson, they discussed "all the problems at the office." They then decided to return to the premises and arrived there at approximately 3 p.m. At that time Ellis called the employees together and told them that he considered their action in "walking out" and "abandoning the clients" and refusing to make themselves and their records available to the DDC inspectors to be "a flagrant violation of agency policies and practices" and that they were all terminated as of noon that day.

The Administrative Law Judge found that the employees' discharges were motivated by their work stoppage and walkout. However, the Administrative Law Judge found that the employees' conduct was unprotected and that, therefore, their discharge did not violate Section 8(a)(1). He found that, although in his opinion it was not clear that any single aspect of the employees' conduct could be singled out as a defense to Respondent's action in discharging them for the walkout, nevertheless, under all the circumstances, the employees' acts removed them from the protection of Section 7 of the Act.

We agree with the Administrative Law Judge that Respondent's termination of the employees herein did not violate the Act. However, we do not subscribe to the view implied in his Decision that employees of health care institutions are held to a different standard of conduct than employees of other entities. While the Board, in determining whether health care employees have engaged in unprotected conduct, has considered whether any harm to the institution's patients was caused by the employees' concerted activity, nevertheless, it has applied the same standards of conduct to health care institutions as it does to other enterprises.[7] Thus, conduct such as a concerted work stoppage in protest over employee grievances, even if engaged in by health care institution employees, is protected unless it is unlawful, violent, in breach of contract, or otherwise indefensible.[8]

We need not, however, reach the issue of whether the manner of the employees' protest took it outside the protection of the Act,[9] for the record

[6] Since several of the file cabinets were unlocked, Ellis was able to pull some medical files and other records for DDC inspection.

[7] See, e.g., *Leisure Lodge Nursing Home*, 250 NLRB 912, 918 (1980); *Walker Methodist Residence and Health Care Center, Inc.*, 227 NLRB 1630, 1632 (1977); *Dan Lipman, Norman Ruttenberg, and Abe Goldstein, a Partnership, d/b/a Ascot Nursing Centre*, 216 NLRB 680, 685 (1975). In the present case, Respondent offered no evidence that any of the methadone patients were endangered or harmed by the employees' walkout.

[8] *Walker Methodist Residence and Health Center, Inc., supra* at 1632.

[9] We note, however, that nurse-employee Shirley Rickert's refusal to turn over her keys to Ellis, along with the other employees' departure from work with their keys to the file cabinets, makes a strong case for a finding that the employees exceeded the bounds of permissible conduct. See, e.g., *Beacon Upholstery Company, Inc.*, 226 NLRB 1360, 1366–67 (1976).

reveals that the General Counsel has failed to meet his burden of showing that the walkout, whatever the particulars, constituted concerted protected activity. In this regard, the record indicates that the employees' complaints were based on several facts: the termination of Project Director Willis; disenchantment with the new "Clinical" director, Fisch; opposition to the program geared toward JCAH accreditation; and unspecified criticism of the quality of treatment being given Respondent's clients, including what was in their view the "low priority" given to client treatment by management.[10] To the extent that the walkout was precipitated by the discharge of Project Director Willis and the employees' opposition to Clinical Director Fisch, both supervisors, it was unprotected, since the record contains no evidence that the identity and capability of the supervisor involved had a direct impact on the employees' own job interests. Similarly, it is by no means obvious that management's program for JCAH accreditation and the ostensible "low priority" given to client treatment had an impact on the employees' terms and conditions of employment, and the record contains no evidence making a connection between these "philosophical" or policy differences with management and the employees work conditions.[11] Thus, we are presented with a record devoid of evidence that the walkout herein in any way encompassed a protest by the employees over the actual terms and conditions of their employment and was, therefore, protected.[12] In the absence of such evidence, we must conclude that the employees' protest has not been shown to be protected activity and on that basis we adopt the Administrative Law Judge's recommended Order dismissing the complaint.[12]

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBER JENKINS, dissenting:

I cannot agree with my colleagues that the employees' walkout was unprotected. The General Counsel asserts, and the record supports, a finding that, prior to the walkout, the employees expressed concerns about their working conditions. Aside from their concern about the discharge of the project director, employees discussed tension between the clinical director and the staff and the increased workload resulting from Respondent's attempt to secure accreditation from the Joint Commission on the Accreditation of Hospitals (JCAH). Indeed, when Respondent refused to meet with the employees concerning their grievances, the employees sought the assistance of the Illinois Dangerous Drug Commission. The above grievances obviously relate to the employees' terms and conditions of employment and, as the Administrative Law Judge found, formed the background for the walkout. My colleagues, however, dismiss these concerns as "philosophical" or policy differences with management unrelated to working conditions. The majority further implies that the grievances were not justified and not articulated.

Whether or not the employees' perceptions were correct or whether or not they conveyed their concerns to Respondent's satisfaction is not relevant. The fact is that the employees perceived Respondent's actions as impacting on their working conditions. Therefore, their walkout in support of their

[10] The record gives no indication as to the exact nature of the "grievances" the employees wished to discuss before they walked out.

[11] In this regard, we note that the mere assertion by one witness that Respondent's policies placed an "undue burden" on the employees is insufficient to make such a connection.

[12] To the extent that the walkout was precipitated by DDC official Sorrentino's refusal to immediately meet with them, such a reason does not relate to the employees' terms and conditions of employment if only because the DDC was not their employer. Consequently, a walkout for such a reason is unprotected.

[13] We find, however, that the record evidence is insufficient to support the Administrative Law Judge's conclusion that the nature and timing of the employees' acts reflected a calculated attempt on their part to sabotage the DDC inspection and imperil the health services normally provided to Respondent's methadone-dependent clients. It is true that, during the one-half hour between the arrival of the DDC inspectors and the walkout, certain work was apparently not performed by the employees. However, the evidence indicates that, far from being thoroughly considered and calculated acts, the employees' conduct here reflected a precipitous decision to register a collective protest over what they felt was an insensitivity to their complaints. In this regard, we note that the entire episode, from McGuire's request for a meeting with the DDC representatives to the walkout itself, lasted at most 30 minutes and the employees' conduct was triggered not by the appearance of the DDC representatives or the fact that the hour for servicing methadone clients was near, but rather immediately followed the refusal by DDC officials to meet to discuss their complaints. Thus, in our view, it cannot be said that the employees chose a particular moment to walk out with an intention of causing acute harm to Respondent.

In addition, we do not agree with the Administrative Law Judge's statement that, by walking out because the DDC would not meet with them immediately, it might be said that the employees engaged in an unprotected attempt to "seize control of and dictate their conditions of work." There is no contention, nor is there any evidence, that the employees engaged in a slowdown, a partial strike, or any other conduct which could be characterized as an attempt to "maintain the benefits of remaining in a paid employee status while refusing, nonetheless, to perform all the work they were hired to do." See, e.g., *Classic Products Corporation*, 226 NLRB 170, 177 (1976); *Elk Lumber Co.*, 91 NLRB 333 (1950); *Polytech, Incorporated*, 195 NLRB 695, 696 (1972). *Jon S. Swift Company, Inc.*, 124 NLRB 394, 396–397 (1960), enfd. in pertinent part 227 F.2d 641 (7th Cir. 1960).

Finally, the fact that the employees neglected or refused to perform their work during the short period preceding the walkout would not justify their termination, since both their desire to meet and discuss their course of action and their subsequent refusal to work and walkout to protest Respondent's policies are consistent with their Sec. 7 right to engage in concerted activity. See *Firestone Steel Products Company*, 248 NLRB 549 (1980). As noted above, there is no evidence that the employees attempted to remain at work while refusing to properly perform their jobs.

grievances was protected and Respondent violated Section 8(a)(1) by discharging them. See *S. L. Industries, Inc.*, 252 NLRB 1058 (1980), which sets forth a rationale and reaches a result directly contrary to my colleagues' decision here.

## DECISION

### STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard in Rockford, Illinois, on September 8 and 9, 1980, upon an unfair labor practice charge filed on March 10, 1980, and a complaint issued on March 28, 1980, alleging that Respondent violated Section 8(a)(1) of the Act by discharging employees Terry McGuire, Shirley Rickert, Mary Johnson, Bea Olk, Maurice Cox, and Chris Box because they engaged in concerted activity protected by the Act. In its duly filed answer, Respondent denies that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel and Respondent.

Upon the entire record in this proceeding,[1] including my opportunity to observe directly the witnesses while testifying and their demeanor, and after consideration of the post-hearing briefs, I hereby find as follows:

### FINDINGS OF FACT

#### 1. JURISDICTION

A threshold issue is presented by Respondent's denial that the Board has jurisdiction over its operations. In this connection, it is noted that Respondent is a nonproprietary, nonprofit Illinois corporation. It is engaged exclusively in providing social service involving prevention and treatment of drug abuse, alcoholism, and domestic violence. For the fiscal year ending June 30, 1980, Respondent derived revenues of $482,597. However, that sum includes public and private grants and contributions to an extent overwhelmingly demonstrative of an operation whose overall character is one of nonprofit, nonproprietary public assistance, with client fees amounting to .003 percent of Respondent's overall revenues.

Beyond gross revenue, the record is devoid of commerce data. Undisclosed is the extent to which Respondent purchases materials or services from sources beyond the State of Illinois or derives revenue from goods or services provided outside of that State.

Respondent challenges the assertion of jurisdiction on two grounds. Firstly, it is urged that Respondent is not a person "affecting commerce" within the intent of the Act. As indicated, aside from revenue figures, there is no evidence that Respondent engages in interstate commerce and hence, insofar as appears from this record, Respondent's operations were in no way dependent on sales or out-of-state purchases in the form of goods and services. Nonetheless, contrary to Respondent, the General Counsel observes accurately that operations similar to those performed by Respondent have been treated as health maintenance organizations within the meaning of Section 2(14) of the health care amendments to the Act of 1974.[2] Furthermore, in *East Oakland Community Health Alliance, Inc.*, 218 NLRB 270 (1975), the Board held that such institutions are subject to a discretionary jurisdictional standard of $250,000 in gross revenue per annum, and that legal jurisdiction need not be established by proof of direct or indirect inflow of goods or services where the record establishes that "the greatest portion" of the Employer's revenues derive from Federal sources under nationally administered programs. As the Board stated in *Mon Valley United Health Services, Inc., supra* at 728, "the transfer of such funds across state lines constitutes commerce more than sufficient to establish our legal jurisdiction."

Upon the foregoing, it is apparent that jurisdictional requirements are met herein. Respondent's gross revenue of $482,597 for the fiscal year ending June 30, 1980, a representative period, includes revenue sharing funds originating with the Federal Government totaling $43,750, domestic violence grants originating with the Federal Government totaling $61,925, grants pursuant to the Federal Comprehensive Employment and Training Administration (CETA) totaling $105,960, and approximately $87,687 in funds originating with the National Institute of Drug Abuse. Thus, a total of approximately $299,322 of Respondent's revenues in fiscal year 1980 were derived from Federal sources. Based thereon, Respondent's contention that its operations did not affect commerce so as to support legal jurisdiction of the Board or to meet the Board's discretionary standards for asserting jurisdiction is rejected.

Respondent also contends that Respondent enjoys the status, by virtue of Section 2(2) of the Act, of a "political subdivision" of the State of Illinois and hence is exempt. Under established Board policy, exempt political subdivisions of a State are those which meet either of the following requirements: (1) they are created directly by the State so as to constitute departments or administrative arms of government, or (2) they are administered by individuals who are responsible to public officials or to the general electorate. See, e.g., *N.L.R.B.* v. *The Natural Gas Utility District of Hawkins County, Tennessee*, 402 U.S. 600 (1971). Respondent concedes that it is not qualified for the exemption under the first criterion, but argues that it is "an entity administered by persons who are responsible to . . . public officials."

In this connection, it is noted that Respondent operates three programs. The "Keyway program" is that from which the instant dispute emerges. Through Keyway, alcoholics and drug abusers in the Winnebago and Boone County areas of Illinois are treated. The "WAVE" program affords services to persons subject to domestic violence. And finally, "Prevention and Education Services" attends essentially to those who may be potential initiates to drug abuse. These *purely* not-for-profit programs are

[1] Certain errors in the transcript are hereby noted and corrected.

[2] See, e.g., *Mental Health Services—Erie County South East Corp.*, 220 NLRB 96 (1975); *Alcoholism Services of Erie County, Inc.*, 236 NLRB 927 (1978); *Mon Valley United Health Services, Inc.*, 227 NLRB 728 (1977); *Trailback, Inc.*, 221 NLRB 527 (1975); *Long Beach Youth Center, Inc., a/k/a Long Beach Youth Home (formerly Trailback, Inc.)*, 230 NLRB 648 (1977).

subject to ultimate control of a board of directors, which is composed of private citizens who voluntarily provide their time and skills, while serving without compensation on a charitable basis. Indeed, the highest level official of Respondent who receives any compensation at all is the executive director, who apparently serves on a full-time basis as the individual immediately responsible for day-to-day operations of all three programs. At times material other management functionaries consisted of the associate director, three project directors, and, as shall be seen, a clinical director.

Respondent's claimed exempt status rests essentially on its relationship to the Illinois Dangerous Drug Commission (DDC). The latter is a state agency charged with responsibility for licensing, monitoring, regulating, and funding various organizations within the State of Illinois engaged in the treatment, care, rehabilitation, education, and prevention of drug abuse. DDC's funding activity includes the channeling of Federal funds to qualified organizations engaged in the drug abuse field. The operations of Keyway are conducted only through authority conferred by DDC and no drug abuse related programs may be conducted within the State of Illinois unless licensed by the latter. Such licenses are valid for a period of 1 year only and must be renewed annually. The DDC issues various rules and regulations governing operations of licensed agencies. In this regard Respondent proffered several documents and parole testimony to identify the degree of control that DDC exercises with respect to Keyway's operations.[3] It appears therefrom that certain limitations are imposed upon licensed applicants with respect to the latter's employment of those with a criminal record,[4] and clients in treatment programs are barred from employment in any capacity involving contact with client records or treatment plans.[5] Debarment from employment in a licensed agency is also sanctioned, apparently by state law as to those who violate the DDC's enabling statute, its regulations, rules, or standards or any Federal or state law relating to use or abuse of drugs. A similar employment exclusion obtains with respect to offenders of state or local laws pertaining to public health, safety, sanitation, and building codes, to those who submit false information to the DDC, to those who fail to effect treatment and rehabilitation pursuant to approved programs, to those who permit unlawful acts on licensed premises, and to those who fail to demonstrate reasonably sufficient character pertaining to honesty and integrity to warrant operation of a licensed facility. Finally, those whose Federal registration or license to distribute or dispense methadone or other controlled substances has been suspended or refused may not be permitted to operate a licensed institution. The DDC is authorized to "conduct such inquiry into the background of sponsors and administrative and staff personnel as might be required to assure that those individuals satisfy the licensing standards . . . ." (See rule 226, Resp. Exh. 2(b).)

In other respects as well, DDC's regulation of a licensed agency is extensive and cuts deeply into the manner by which methadone is administered and the circumstances under which clients are treated and counseled. Thus, to assure compliance with DDC objectives, licensed agencies are subject to reporting requirements, as to the identity of the chief operating officer, members of the board of directors, any owner, all staff members or consultants, and descriptions of in-service training programs and planned programs for vocational training and rehabilitation. Additionally, quarterly onsite visits are made by DDC investigators to examine fiscal, administrative, and clinical aspects of the licensed agency. It also appears that DDC controls the hours of operation and client intake, and it must approve any variation from the established pattern.

Respondent contends that by virtue of DDC regulation, monitoring, and control Respondent is a functioning arm of DDC and hence a "political subdivision under decisions of the National Labor Relations Board." However, Respondent has no special status as a corporation created specifically and *directly* by the State to accomplish a public purpose.[6] Its operations are multifaceted and include prevention and treatment beyond the area of interest of DDC. Its board of directors are neither selected by nor responsible to the electorate or to public officials but apparently are selected from the community on some basis independent of governmental influence. While licensing is conditioned upon designation to the board of directors of individuals conforming with standards specified in enabling rules and statutes under which the DDC functions, those regulations do not establish affirmative qualifications, but only specific grounds for disqualification.

While there can be no question that control is exercised by DDC over Respondent's drug abuse prevention activity, the authority exercised by the DDC is of a regulatory nature enforced pursuant to licensing authority. The infusion of state authority in Respondent's operation is confined to the latter's drug abuse programs and is pursuant to overall guides and standards enumerated in state statutes whose enforcement is entrusted to DDC, a state agency. In all other respects, control of the day-to-day drug abuse activity is within the sole authority of Respondent. Respondent develops its own job descriptions, hires, fires, determines wage rates and benefits, and has exclusive control over discharges and discipline of its employees. Significance may also attach to the fact that DDC's authority does not appear to draw any distinction between nonprofit and commercial ventures, and apparently all may be authorized to afford public access to a drug abuse program if they conform to uniformly administered criteria.

[3] See Resp. Exhs. 2(a) and 2(b). Said documents were described on the record as "two sections out of the Illinois Dangerous Drug Commission's rules and regulations manual." These do not appear to represent the entirety of the enabling legislation creating and conferring authority upon the DDC, nor do they seem exhaustive as to the DDC's actual implementation of its authority to regulate various licensed agencies.

[4] See rule 21.08 in Resp. Exh. 2(b). The provision in question indicates that "a past criminal record" is not a bar to employment of an individual in a program. However, those in that category, to be eligible for employment by a licensed agency, must have previously exhibited "rehabilitative performance" for a 1-year period.

[5] See Resp. Exh. 2(a), rule 11.02(B). Exceptions to the above policy may be granted on application to the DDC.

[6] Cf. *Madison County Mental Health Center, Inc.*, 253 NLRB 258 (1980).

Upon the foregoing, it is found that the influence exercised by the DDC does not entail a degree of control sufficient to warrant a finding that Respondent, with respect to its drug-related services, is a joint employer with the DDC or to justify an extension of the DDC's exempt status as a political subdivision of the State of Illinois to Respondent. In short, Respondent's independent control of the labor relations of its employees is sufficiently dominant and exclusive to warrant the conclusion that it functions as a licensed entity, which, not unlike a public utility or other closely regulated venture, must abide by specified terms of a state statute and regulations pursuant to the standards prescribed therein.

Accordingly, it is found that Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board.[7]

## II. THE ALLEGED UNFAIR LABOR PRACTICES

On the merits, the sole issue presented is whether Respondent discharged six Keyway staff members in violation of the Act. Thus, on February 27, 1980,[8] at approximately noontime, employees Terry McGuire, Shirley Rickert, Bea Olk, Maurice Cox, Chris Box, and Mary Johnson left work suddenly with neither prior notice nor indication as to whether or when they would return. All six did in fact return at approximately 3 p.m. that same day only to be terminated by Respondent's executive director, David Ellis.[9] The General Counsel contends that this collective walkout was a protected exercise of employee rights guaranteed by Section 7 of the Act and hence the resulting discharges were violative of Section 8(a)(1). Thus, it is claimed that prior thereto, said employees had manifested concerns pertaining to their employment conditions; namely, the recent discharge of their project director, tension between them and Respondent's recently hired clinical director, and the increased workload imposed on them in consequence of Respondent's attempt to achieve hospital accreditation for its Keyway program. On behalf of the complaint, it is argued that the walkout was triggered by the failure of Respondent to treat with the employees to their satisfaction with respect to said grievances and hence the statute insulated them from discipline in consequence of their chosen form of protest.

Specifically, the facts show that the Keyway treatment project was limited to the counseling and treatment of clients addicted to narcotics and other drugs as well as those prone toward alcoholism. Within Keyway, two distinct drug addiction programs existed—the drug-free program and the methadone maintenance program. The former entailed counseling services to individuals with a history of drug involvement who were not presently addicted or engaged in drug abuse. The methadone maintenance program was confined to the addicted and involved counseling as well as medication in the form of methadone, a controllable narcotic which is administered to clients under conditions permitting them to function in the community without dependence on "street" drugs. The six dischargees included all three counselors (Terry McGuire, Maurice Cox, and Chris Box) who were assigned to the drug-free and methadone maintenance services. The actual administration and dispensation of methadone was in the hands of two registered nurses, Shirley Rickert and Bea Olk, both of whom participated in the strike and were discharged. The final dischargee was Mary Johnson, a professional counselor utilized in the phase of the Keyway program involving alcoholism.

By way of background it is noted that Respondent was essentially publicly supported and its opportunity to maintain and enhance revenue grants was directly related to accreditation. An independent organization called the Joint Commission on the Accreditation of Hospitals (JCAH) engages in the review and certification of various health care institutions for purposes of accreditation. Some years prior to the events here in issue, Respondent had been accredited by JCAH, but only with respect to its activity in the area of alcoholism. In mid-1979, JCAH informed Respondent that accreditation would no longer be granted on a segmented basis and that all functions within the agency had to qualify before accreditation would be conferred at any level. Pursuant thereto, Respondent became obliged to prepare the entire agency for JCAH accreditation.[10] In consequence, it had become necessary to prepare the Keyway operation for accreditation for the first time, a task that had to be accomplished within a 10-month period. Historically, Dennis Willis had been the Keyway project director. When it became apparent to Respondent that Willis lacked the training and experience to make requisite changes to meet accreditation standards, Respondent hired Mark Fisch as "Clinical Director" to assist Willis in developing clinical practices within Keyway which would facilitate accreditation. Upon hire, Fisch was charged with responsibility for development of a program manual in conjunction with the staff, and to provide in-service training and supervision of the Keyway staff on clinical issues and treatment planning, including improved counseling and recordkeeping.[11] As what appears to have been a "side line," he also was involved in the effort to enlist local industries in Keyway's industrial alcoholism program.

Uncontradicted evidence offered by Respondent discloses that Fisch was received by the Keyway staff in less than enthusiastic fashion. It appears that the staff refused to respond to changes directed by Fisch in their method of operation and that they also avoided his in-house training sessions, going so far as to deliberately

[7] See, e.g., *Alcoholism Services of Erie County, Inc.*, 236 NLRB 927, 928–929 (1978).

[8] All dates refer to 1980, unless otherwise indicated.

[9] David Ellis at the time of the hearing was no longer employed by Respondent. As he was actively employed as executive director during the time frame relevant to this proceeding, he shall be referred to herein as the executive director.

[10] Based on the credited testimony of Donna Peterson. Peterson shall be referred to herein as Respondent's associate director, the position she held at the time of the events here in issue.

[11] Fisch was a former project director employed by Respondent who, in the past, had gone through the accreditation process. He was considered highly qualified and experienced in such matters. Consistent with Respondent's contention, I find that Fisch was charged with authority to direct the staff, using independent judgment of a nonroutine nature and that he was a supervisor within the meaning of the Act.

schedule appointments with clients so as to preempt their ability to attend such sessions.

In contrast to Fisch, the Keyway staff apparently possessed strong allegiances to Project Director Willis. The attitudes held in this respect came to the fore when, in January, Executive Director Ellis discharged Willis, an event which provoked brooding opposition on the part of the Keyway staff. Pursuant thereto, at a meeting with Ellis on January 31, they challenged his assigned justification for the discharge and requested the opportunity to themselves present their position to the board of directors. At the time, Ellis indicated that he would inform the board of directors of said request. Later, in early February, the board met with Willis and upheld the action of the executive director. Thereafter, Ellis met with the Keyway staff informing of both the board's determination and that the board declined to meet with them. In the interim, members of the Keyway staff decided that they would communicate their grievances to the DDC, which as indicated was the Illinois state agency charged with licensing Keyway and channeling Federal and state grants to the latter.[12] Thus, a letter dated January 31 was drafted by Mary Johnson, Chris Box, and Terry McGuire. Its content was as follows:

> Dear Mr. Sorrentino,
>
> This letter is a formal grievance from the entire staff of the Keyway Treatment Center, 327 South Church Street, Rockford, Illinois, in protest of the abrupt dismissal of the project director, Mr. Dennis A. Willis by the administration of P.H.A.S.E., Inc., 630 North Church Street, Rockford, Illinois. The initial reaction of the Keyway staff was to leave in protest. However, we have chosen to remain on the job and protest through the proper channels with the Dangerous Drugs Commission.
>
> In a meeting this afternoon requested by the Keyway staff, the Executive Director of P.H.A.S.E., Inc., Mr. David Ellis stated that the primary issue for the firing of Mr. Willis was resistance to directives handed down by the P.H.A.S.E., Inc. administration. Specific mention was made of:
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> 1) Not distributing memoranda to the Keyway staff—(refuted by staff) and,
> 2) Not implementing changes in forms proposed by a committee—(refuted by staff).
>
> The issue not addressed by Mr. Ellis, but explored by the Keyway staff at length, was the staff resistence [sic] to the new Clinical Director, Mr. Mark Fisch, formerly of Oak Park Family Services, who was hired recently to prepare the agency for J.C.A.H. accreditation, provide in-service training sessions, supervise the D.W.I. program, and promote the Industrial Alcoholism program. The Keyway staff has openly ventilated its displeasure in staff meetings concerning Mr. Fisch's materials being irrelevant to Keyway clients, with no response from the P.H.A.S.E., Inc., administration. Mr. Willis has consistently supported Mr. Fisch, while attempting to ameliorate the friction in the Keyway staff.
>
> We, the staff, feel very strongly that we are attempting to provide quality service to the methadone population and the population in drug-free treatment. At the present time we are deeply concerned about the treatment of the above populations with the entire staff in disarray, and treatment of clients apparently being a low priority item on the agenda of the administration of P.H.A.S.E., Inc.
>
> Professional responsibility for the treatment of clients is the primary reason the staff has decided to remain at Keyway until an inquiry by the D.D.C. can be completed. Besides registering a grievance concerning the firing of Mr. Willis, we are requesting the following from D.D.C.:
>
> 1) A site visit by the Field Representative of D.D.C. at the earliest possible date, and,
> 2) An informal hearing at the earliest possible date.
>
> Sincerely,
>
> cc: Administration, P.H.A.S.E., Inc.

After the entire staff, as well as two physicians employed by Respondent, affixed their signatures to said letter, it was forwarded on or about February 1 to Sorrentino, a regional coordinator for the DDC.[13]

The record does not disclose the nature, if any, of a response on behalf of DDC. However, on February 27, at approximately 11:30 a.m., Sorrentino and another representative of DDC, Mary McCarter, appeared at Respondent's premises to perform a quarterly onsite visit in connection with the Keyway program. While they were engaged in preliminary discussions with Executive Director Ellis as to the intended scope of their review, members of the Keyway staff assembled, deciding that Terry McGuire would seek an audience with the DDC officials in order to air their grievances. McGuire walked in on the DDC conference, advising that the staff wished to discuss the problems they were having in the program with McCarter and Sorrentino, adding that Ellis and Fisch were to be excluded therefrom. McGuire acknowledged that McCarter then explained that she and Sorrentino intended to inspect client files and medical records and that, on conclusion of this task, they would interview the staff. Sorrentino clarified the expressed intent to meet, by asking McGuire if he "understood that we are not refusing to meet with you." McGuire acknowledged that this was the case.

McGuire then returned and informed the staff as to what had transpired. In the meantime Ellis compiled a list of clients' files to be checked at random by the DDC agents, which he gave to McGuire, requesting that the latter pull listed files in his custody. McGuire was instructed to then give the list to Maurice Cox and Chris

[12] The Keyway operation was funded almost entirely by DDC grants. As indicated its program could not exist without a DDC license.

[13] In addition to the above letter, Sorrentino testified that, prior to February 27, he received several telephone contacts from Shirley Rickert and Terry McGuire, and that McGuire and Chris Box personally visited him in his Chicago office in connection with the problems existing within the Keyway staff.

Box so that they could in turn pull their files. Ellis then returned to his office, but, having received no response from the counselors, returned to McGuire's office and asked for the files. McGuire indicated that he had not followed up on Ellis' direction and that he had given the list to Maurice Cox. Ellis then went to the office of Cox where the latter advised Ellis that he was "too busy" to pull the files and that he was preparing to leave.

Thereafter and shortly before noon, Ellis noticed that the staff had gathered at the front entrance. When Ellis and Sorrentino attempted to discern what was going on, members of the staff variously indicated that they were leaving or "going to lunch." Ellis indicated that they could not do so because they had to pull the files in order for the DDC to begin the onsite visit. Nonetheless, the entire staff left, without indicating whether or when they would be back, and with the keys to cabinets which contained the confidential client files.[14]

In addition to the disobedient refusal to pull the files, this walkout occurred at a time when at least five members of the Keyway staff had immediate responsibility in connection with the methadone program. Thus, clients eligible for methadone medication were scheduled to appear for treatment at Keyway twice daily. The first such session was between noon and 1 p.m., with about 13 addicted clients scheduled for medication. By walking out, the registered nurses responsible for the administration of the methadone and the three counselors knowingly compromised their responsibility for the administration of methadone to said clients as well as their counseling.[15] In addition, the departure of the staff with the keys to the confidental counseling and medical files impeded the DDC in its ability to perform its survey.[16]

At 3 p.m., on February 27, all six members of the Keyway staff returned to work, and were informed of their discharge. Several months later, all were offered reinstatement to their former or substantially equivalent positions.

Respondent raises a myriad of defenses contesting the alleged protected status of the walkout. They range from the failure of the dischargees to afford notice pursuant to Section 8(g) of the 1974 health care amendments to the Act to claims that the underlying grievances were unprotected because they entailed a challenge to Respondent's action with respect to the termination and retention of supervisory personnel. Finally, it is asserted that the "self-help" effort by the dischargees was unprotected as containing attributes of sabotage, insubordination, and willful abandonment of their professional responsibilities at a time of great need.

The record herein establishes with clarity that the instant discharges were not effected simply because those assigned to the Keyway project held grievances. However, it is just as clear that their participation in the work stoppage was the motivating cause. Section 7, as established precedent attests, affords broad protection in insulating from discipline employees who quit their work in quest of improved conditions of work. The defenses available to employees who elect to discipline those who make common cause on that basis and where no union is involved are narrow and, absent violence on the part of strike participants and except for an employer's right to replace those involved permanently, no other accommodation is revealed in Board precedent affording weight to the interest of an employer in maintaining discipline and a continuity of operations. Board precedent is not entirely clear as to whether employers in the health care field are afforded any broader latitude. However, the brief of the General Counsel accurately points out that, under Board policy, managers of health care institutions may not legitimately effect discipline even though the work stoppage is spontaneous and entails *potential harm* to socially oriented programs or patient care. Instead, in order to remove the stoppage from the protected ambit of Section 7, actual harm must be demonstrated,[17] for, as the Board has observed, "protection of the Act will not be denied merely because someone not directly affected by the controversy might consider the work stoppage to be ill-timed, unreasonable, or showing poor judgment."[18]

Nonetheless, I am persuaded on the totality of the evidence that the conduct of the dischargees was beyond the protected ambit of Section 7. This despite the fact that, though possible, it is not entirely clear that any single aspect of the incident may be compartmentalized in an established and recognized defense to the instant charge of discrimination. For, I am convinced that the overall circumstances, if the predicate for a remedy under the Act, would countenance a reenforcement and encouragement of indefensible employee conduct endangering health care to a degree outweighing the statutory interests to be served by Board intervention. There is ample room for such a formulation.

In 1974, when the Board was granted jurisdiction over health care facilities, Congress acted in the face of conflicting concerns, which were described by the Board in *Walker Methodist Residence and Health Care Center, supra*, as follows (at 1630):

[14] Ellis did not possess duplicates of these keys. He specifically asked Shirley Rickert for her keys as she was leaving, but Rickert refused indicating that she was too busy and going to lunch. Rickert was a registered nurse responsible for the security, preparation, and administration of methadone.

[15] I did not believe the uncorroborated testimony of Johnson that she thought that "the nurses medicated . . . seven or eight of the clients before they left." I also discredit her testimony that Ellis was told at the time they left that they would return. Johnson did not impress me favorably. The nurses did not testify. I believed the testimony of Ellis that the latter joined the walkout without preparing the dosages in advance, as was their duty.

[16] See Resp. Exh. 4.

[17] See, e.g., *Walker Methodist Residence and Health Care Center, Inc.*, 227 NLRB 1630 (1977); *Mercy Hospital Association, Inc.*, 235 NLRB 681 (1978); *Long Beach Youth Home (formerly Trailback, Inc.)*, 230 NLRB 648 (1977).

[18] *The Masonic and Eastern Star Home of the District of Columbia*, 206 NLRB 789 (1973). While I would agree with the General Counsel that the walkout of the Keyway employees did not produce actual harm to clients scheduled for the noon hour methadone session, as shall be seen more specifically below, this eventuality was not within anticipation of participants in the walkout, since only averted by the resourceful action of the executive director. At the same time, it is noted that the stoppage did frustrate completion of the quarterly review by representatives of the DDC, the agency on the basis of whose funding and licensing Respondent was privileged to provide treatment enabling the "addicted" to function in the community.

> On the one hand, it was noted that it is unjust to deny to the employees of nonprofit hospitals the rights granted to employees in other industries to organize and bargain collectively. On the other hand, special protection seemed necessary when dealing with health care institutions in order to assure continuity of patient care. As a result of a balancing of these concerns, the Act was amended by extending coverage to employees of nonprofit hospitals and adding a new Section 8(g) requiring a labor organization to give 10 days' written notice before striking or picketing at a health care institution. Additionally, Section 8(d) was modified to extend the loss of status sanction to employees who engaged in a strike proscribed by Section 8(g).[19]

The Board in *Walker Methodist Residence, supra*, applied Section 8(g) literally and observed that Congress may have limited the notice requirement to "labor organizations" because a strike by the latter "is likely to last longer and involve a greater number of employees" and "the presence of a picket line has the potential for interfering with respect . . . [to] . . . supplies and making both replacements and nonstriking employees unwilling to work."[20]

The foregoing firmly establishes that employees acting in concert independent of a labor organization do not necessarily lose their protected status because they engage in a walkout without prior notice. But does this mean that such stoppages are to be treated in the health care industry on parity with that afforded elsewhere? In *Walker Methodist Residence, supra* at 1631, the Board, in discussing an element of concern in the enactment of the health care amendments, stated: "Congress was concerned that sudden, massive strikes could endanger the lives and health of patients in health care institutions." And with respect to other forms of protected activity, the Board has reacted with sensitivity to the especial exigencies of labor-management relations in the health care field. Thus, in *St. John's Hospital and School of Nursing, Inc.*, 222 NLRB 1150 (1976), a health care facility was permitted to impose broader restrictions on employee distribution of union literature on nonworking time than would obtain in other industries. In so holding, the Board stated (at 1150):

> [T]he primary function of a hospital is patient care and that a tranquil atmosphere is essential to the carrying out of . . . function. In order to provide this atmosphere, hospitals may be justified in imposing somewhat more stringent prohibitions on solicitation than are generally permitted. For example, a hospital may be warranted in prohibiting solicitation even on nonworking time in strictly patient care areas, such as the patients' rooms, operating rooms, and places where patients receive treatment, such as x-ray and therapy areas. Solicitation at any time in those areas might be unsettling to the patients—particularly those who are seriously ill and thus need quiet and peace of mind.

Thus, the Board has recognized that the mere exchange of union literature between employees may be "unsettling" to the patients and hence beyond the protective pale of Section 8(a)(1). If such minimal conduct may render employees fair game for discipline, it would seem that the potential for adverse effects on patient care due to work stoppages in health care institutions, if not conclusive, be given some weight to the overall assessment of whether participants in such a stoppage are protected by the Act.

Here, the stoppage on the part of the Keyway staff possessed the qualities of a "quicky strike." After rejection of their demand for an immediate meeting with DDC, the employees walked out, without giving indication of whether they were quitting, striking, or, indeed, whether or when they would return. They returned unexpectedly at 3 p.m. before Respondent could implement its right to continue operations through the utilization of permanent replacements. They left with keys, for which there were no duplicates on the premises, to confidental medical records and counseling files which they knew would be needed both to treat clients who would soon be arriving for their 12 to 1 p.m. methadone medication and to facilitate the DDC site visit. Indeed, the RNs walked out without preparing the methadone for dispensation and apparently without concern for the implications of their sudden departure on those soon to arrive for medication. The registered nurses and counselors by the timing of their action and its nature reflected a calculated and knowing attempt not only to frustrate the DDC onsite inspection, but to imperil the health services to be provided methadone-dependent addicts.[21] As heretofore indicated, harm did not result, but from all indications on this record, the participants in the work stoppage were willing to run that risk.

Contributing further to the conclusion that the above conduct was unprotected is evidence as to the basic nature of the grievances. Under established Board precedent assertion of a grievance is protected without regard

[19] Under Board precedent there is no merit in Respondent's contention that the employees of Keyway lost their protected status by virtue of their walking out without affording said 10 days' notice. For the Board has interpreted Sec. 8(g) "as applicable only to strikes or picketing involving a labor organization." See *Walker Methodist Residence and Health Care Center, supra*, 227 NLRB at 1631. Alternatively, however, Respondent contends that the participants in the work stoppage herein met the statutory definition of a labor organization within the meaning of Sec. 2(5) of the Act. As far as this record discloses, the employees in question acted without structure or organization, and simply were in the nature of a group of employees who shared a common, reasonably specific grievance. It does not appear that the combination of employees existed for the purpose of treating with Respondent as to other matters, or beyond resolution of that which brought them together in early 1980. I find that the evidence does not substantiate that they constituted a labor organization within the meaning of Sec. 2(5) of the Act.

[20] *Walker Methodist Residence, supra* at 1631.

[21] The treatment afforded at the clinic under the methadone program is limited to those addicted to morphine derivatives, including heroin. Methadone is a narcotic substitute which is afforded to the addicted so as to enable them to function socially while continuing their addiction. The doses for each patient varies, as does the scheduled time for medication, both are prescribed by a medical doctor. If a client does not receive methadone as scheduled, withdrawal would probably ensue, resulting in nausea, diarrhea, cramps, and severe physical discomfort, and give rise to the possibility that the client will attempt to allay withdrawal by going to the street and obtaining heroin.

for its meritorious nature. Nonetheless, the complaints of Keyway employees were precariously close to the unprotected. Although the evidence is not clear as to the nature of the accommodation sought by the employees, two items emerge. First, the staff sought reinstatement of their former supervisor, Willis, and, second, they opposed Respondent's retention of a second supervisor, Fisch, and resisted the work sponsored by Fisch in implementation of Respondent's declared interest in readying the Keyway operation for accreditation.[22] Thus, the work stoppage was rooted in grievances by employees as to the identity of those designated by management as their supervisor, and the restoration of Willis and termination of Fisch would plainly have presented an acceptable solution of the complaints. The Board in *Puerto Rico Food Products Corp., Tradewinds Food, Inc. and Island Can Corp.*, 242 NLRB 899 (1979), observed that: "Whether concerted actions by employees to protest an employee's selection or termination of a supervisor falls within the purview of Section 7 of the Act depends on the facts of each case." The Board went on to state "where facts establish that the identity and capability of the supervisor involved has a direct impact on the employees' own job interests they are legitimately concerned with his identity and thereby have a protected right to protest his termination." (*Puerto Rico Food Products Corp., supra.*) Here, the record contains no evidence as to the employee interests fostered through the tenure of Willis, and apart from Fisch's attempt to implement Respondent's accreditation goal, there is no evidence as to how Fisch's retention impacted on employment terms. This aspect may well furnish independent ground for dismissal of the instant case. Furthermore, note that, in cases not involving health care facilities, at least three circuit courts of appeals have ruled that the "means" by which employees protest allocations of supervisory authority is relevant and if unreasonable may remove otherwise protected action from the ambit of Section 7. See *Puerto Rico Food Products* v. *N.L.R.B.*, 619 F.2d 153 (1st Cir. 1980); *Dobbs House, Inc.* v. *N.L.R.B.*, 325 F.2d 531 (5th Cir. 1963); and *American Art Clay Company* v. *N.L.R.B.*, 328 F.2d 88 (7th Cir. 1964).

Furthermore, while the above grievances formed the background for the walkout, the walkout's immediate causation contributes additional doubt as to its protected nature. Thus, on February 27, after the arrival of the DDC representatives, Terry McGuire on behalf of the employees, sought an immediate meeting with the former. He was told by the DDC representatives that they would meet with the employees but only after they had completed their onsite review. Employee dissatisfaction with this response furnished the immediate cause for the walkout. It is true that Section 7 of the Act protects employees who seek to have their grievances aired and who protest in concert to accomplish that objective. Here, however, the question that provoked the stoppage was not whether the grievances would be discussed, but when. In the circumstances, the work stoppage could only have been averted were the DDC representatives willing to afford the audience during working time as dictated by the employees themselves. The maxim that "work time is for work" is a well-established principle underlying interpretation of the Act.[23] One might reason that by walking out because management or the DDC refused to honor their request for an immediate meeting during the workday, as they chose, Keyway staff members engaged in a deliberate, unprotected attempt to seize control of and dictate their conditions of work.

In summary, it would be simple enough to conclude that the Keyway employees, being unorganized, engaged in a work stoppage because they were dissatisfied with their working conditions, and as such were insulated by virtue of the Act from any form of discipline. Such a formulation, however, would, on the facts presented, enshroud irresponsible behavior with a degree of immunity threatening discipline in health care institutions generally and the reliability with which they serve their communities. While employees of such institutions have been declared by Congress as enjoying Section 7 rights to the same extent as employees in other industries, limits on irrational conduct should be set through reasoned application of the Act. And where circumstances cry out for accommodation of the competing interest underlying the health care amendments, in the long term, the more searching analysis will probably serve the interests of health care employees with protected grievances and who act on them in a balanced and concerned fashion. That was not the case here. As indicated the walkout was precipitated by grievances of a marginally protected nature, if that at all. It occurred under conditions in which employees knowingly compromised Keyway's immediate ability to furnish medication to its addicted clients and also frustrated the state agency's effort to evaluate Respondent's suitability as an agency licensed within a local area to mitigate the problems of drug abuse. In the total circumstances, I find that the participants in the February 27 strike engaged in conduct unprotected by Section 7 and that their terminations did not violate Section 8(a)(1) of the Act.

## CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent did not violate Section 8(a)(1) of the Act by terminating employees because they engaged in conduct unprotected by Section 7 of the Act.

[22] Sorrentino, of the DDC, defined the staff's concerns with the JCAH accreditation issue, as follows: "They felt that going for the accreditation was putting undue burden on them for work. They also . . . sensed that it was not really necessary. They couldn't fathom why it was important to them to be doing it."

[23] *Republic Aviation Corp.* v. *N.L.R.B.*, 324 U.S. 793 (1945).

Upon the foregoing findings of fact and conclusions of law, and upon the entire record in this proceeding, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

## ORDER[24]

It is hereby ordered that the complaint herein be, and it hereby is, dismissed in its entirety.

[24] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.